

March 15, 2021

VIA CFTC PORTAL

Commodity Futures Trading Commission
Attention: Chris Kirkpatrick, Secretary
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: CFTC Regulation 40.6(a) Certification: Various Amendments to Nodal Clear Rules

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“Commission” or “CFTC”) Regulation 40.6(a), Nodal Clear, LLC (“Nodal Clear” or “Clearing House”) hereby notifies the Commission that it is self-certifying amendments to the Nodal Clear Rules (collectively, the “Rule Amendments”).¹ The Rule Amendments are attached hereto. The Rule Amendments document indicates the specific text that is being amended. The Rule Amendments shall become effective on March 29, 2021.

Nodal Clear proposes to adopt amendments to its Rules that:

- (i) clarify the operation of the Cooling-off Period. Under the revisions, Clearing Members would be obligated to replenish the Guaranty Fund during a Cooling-off Period, but the aggregate liability of a Clearing Member for both Replenishments and Assessments would be capped at the same level as under the current Rules for all Defaults during a period;
- (ii) clarify the liability of the withdrawing Clearing Members and the liability of the Clearing House in certain loss scenarios; and
- (iii) provide for various other clarifications and conforming changes.

Cooling-off Period Rule Amendments

Nodal Clear Rule 3.35.1 is being added to replace the current Cooling-off Period language in Nodal Clear Rule 3.35(e). Rule 3.35.1 will reduce the Cooling-off Period from six months to 30 Business Days and clarify that Clearing Members must replenish their contributions to the Guaranty Fund during a Cooling-off Period. Nodal Clear is also permitted to rebalance and recalculate the Guaranty Fund during the Cooling-off Period. However, the aggregate amount of both Replenishments and Assessments during a Cooling-off Period will be capped at the same level as under the current Rules (i.e., 550% of the Clearing Member's Guaranty Fund Deposit Requirement). The Rule Amendments will facilitate Nodal Clear's continued ability to meet financial resources requirements (by requiring Replenishment of the Guaranty Fund), while maintaining an aggregate limit to mutualized liability for Clearing Members during the Cooling-off Period. The amendments also provide that if the Replenishment/Assessment cap is hit, Nodal Clear can call for additional Initial Margin as necessary to meet minimum regulatory financial resources requirements for the remainder of the Cooling-off Period.

¹ Capitalized terms not defined herein have the meaning set forth in the Nodal Clear Rulebook.

Rule Amendments Regarding Withdrawing Clearing Member and Clearing House Liability

- Rule 3.34.12 is being added in order to make clear that the Clearing House is not liable for funds or assets lost due to a settlement bank insolvency. However, as noted in the rule text, the Clearing House remains liable for its own gross negligence or willful misconduct.
- Rule 3.35(g) is being revised to eliminate Clearing Member exposure to Assessments for Defaults that occur after the Clearing Member's Withdrawal Date.
- Rule 3.37.1 is being revised to clarify when a Clearing Member has withdrawn after providing notice to the Clearing House.
- Rule 3.37.2 is being revised to more clearly identify applicable liability limits for withdrawing Clearing Members.
- Rule 3.37.5 is being revised to make clear that Clearing Members that have terminated their membership are not liable for Replenishments or Assessments following their withdrawal.

Clarifications and Conforming Changes

- Rules 3.35(b)(vi) and 3.35(c) are being revised to make language regarding the calculation of Replenishment and Assessment amounts more transparent, consistent with related rules, and easier to administer.
- Rule 3.35(j) is being added to make clear that the Clearing House will take care in the collection of any claims against a Defaulting Clearing Member and that the Clearing House may manage a claim against a Defaulting Clearing Member without the consent of any Clearing Member. Also, the Clearing House may assign a claim against a Defaulting Clearing Member to Clearing Members.
- Rules 3.5(p) and 3.20.1 are being revised in order to reflect recent amendments to Commission Regulation 39.13(g)(8)(ii). The Commission published final rules on January 27, 2020 that amended certain regulations applicable to registered derivatives clearing organizations ("DCOs"), including CFTC Regulation 39.13(g)(8)(ii).² Nodal believes its current Rules are consistent with 39.13(g)(8)(ii), but based on industry discussion Nodal believes amendments to Rules 3.5(p) and 3.20.1 could be helpful.

Nodal Clear management has assessed the Rule Amendments and their compliance with applicable provisions of the Commodity Exchange Act ("CEA"), including the Commission's Regulations and DCO Core Principles. Nodal Clear has identified that the Rule Amendments may have some bearing on the following Core Principles:

Core Principle B – Financial Resources: The Rule Amendments will not impact Nodal Clear's ability to discharge its financial, operational, or managerial responsibilities as a DCO. The requirement to replenish the Guaranty Fund is preserved while making clear that there is an aggregate limit to mutualized liability for Clearing Members during the Cooling-off Period.

Core Principle D – Risk Management: The Rule Amendments continue to ensure Nodal Clear's ability to manage the risks associated with discharging the responsibilities of a DCO while clarifying the responsibilities and liabilities related to Clearing Members withdrawing from Nodal Clear.

Core Principle F – Treatment of Funds: The Rule Amendments are consistent with rules and procedures designed to protect customer funds. Nodal Clear will continue to hold all customer funds in specially designated accounts with depositories that meet Nodal Clear's financial, operational, and regulatory criteria.

Core Principle G – Default Rules and Procedures: The Rule Amendments are consistent with rules and procedures designed to allow for the efficient, fair, and safe management of a default as they enhance the allocation of losses that exceed funded resources (via Assessments and Replenishments to the Guaranty Fund).

Core Principle L – Public Information: As required by Core Principle L, Nodal Clear is publicly posting this self-certification letter on its website to ensure that market participants receive advance notice of the Rule Amendments. On the effective date of the Rule Amendments, the updated Nodal Clear Rules will be posted on the rulebook page of the Nodal Clear website.

² 85 Fed. Reg. 4800 (January 27, 2020).

Pursuant to Section 5c(c)(1) of the CEA and the Commission's Regulation 40.6(a), Nodal Clear certifies that the Rule Amendments comply with the CEA and the Commission's Regulations thereunder. Nodal Clear is not aware of any opposing views expressed regarding the Rule Amendments. Nodal Clear certifies that this submission has been concurrently posted on the Nodal Clear website at www.nodalclear.com.

If you have any questions or need additional information regarding this submission, please contact me at 703-962-9864 or alvarez@nodalexchange.com.

Sincerely,

/s/Cody Alvarez

Cody Alvarez
Chief Compliance Officer
Corporate Counsel

Attachments:
Rule Amendments (Redline)